

AGREEMENT

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This "Agreement for Processing and Marketing of Program Recyclable Materials" made on _____, 2018, between Broken Arrow Municipal Authority ("BAMA") and TULSA RECYCLE & TRANSFER, INC., an Oklahoma corporation ("Recycling Contractor" or "Contractor")

RECITALS

WHEREAS, BAMA sought pricing for recyclables processing from the Recycling Contractor in a sole-source process due to the availability of a similar contract between the Tulsa Authority for Recovery of Energy (TARE) and the Recycling Contractor which BAMA could ride on in the future; and,

WHEREAS, the Recycling Contractor submitted a bid in response to the inquiry which was agreeable to BAMA; and,

WHEREAS, BAMA has the power to execute this Agreement; and,

WHEREAS, the Recycling Contractor has the power to execute this Agreement; and,

WHEREAS, BAMA desires to hire the Recycling Contractor to provide services specified hereinafter; and,

WHEREAS, the Recycling Contractor desires to provide services specified hereinafter; and,

WHEREAS, the parties have agreed on the date of the execution of this Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual obligations undertaken herein, the Parties hereby agree as follows:

1 RECITALS AND PRICING MODEL INCORPORATION

- (i) The foregoing recitals are true and correct and hereby incorporated herein by this reference.
- (ii) Documents Comprising the Agreement. The pricing model submitted by the Recycling Contractor on June 20, 2018 (See Appendix A - Processing & Marketing Fee and Recyclable Revenue Share) is incorporated herein by this reference. Additional materials or information submitted by the Recycling Contractor and accepted in writing by BAMA, that are not ambiguous and which do not conflict with this Agreement, are incorporated herein by this reference.

2 DEFINITIONS

As used herein, the capitalized terms, phrases, words, and their derivations shall have the meanings as set forth in Appendix B - Defined Terms Used in Agreements.

3 REPRESENTATIONS AND COVENANTS

3.1 Representations by BAMA

City represents to the Recycling Contractor that BAMA is duly organized and existing in good standing under the laws of the State and is duly qualified and authorized to carry out the functions and operations as contemplated by this Agreement.

3.2 Representations by the Recycling Contractor

The Recycling Contractor represents to BAMA that, as of the Effective Date and at all times during the Initial and any Renewal Terms hereof:

- (i) The Recycling Contractor is duly qualified and in good standing to do business in the State and is duly qualified and in good standing to do business wherever necessary to carry out the functions and operations contemplated by this Agreement.
- (ii) The Recycling Contractor has the power and authority to own or hold under lease its properties and to enter into and perform its obligations under this Agreement.
- (iii) The Recycling Contractor has the power, authority, and legal right to enter into and perform this Agreement. The execution, delivery and performance hereof (i) have been duly authorized, (ii) have the requisite approval of all government bodies, (ii) will not violate any judgment, order, law, or regulation applicable to the Recycling Contractor or any provisions of the Recycling Contractor's organizational documents, and (iv) do not conflict with, constitute a default under, or result in the creation of any, lien, charge, encumbrance or security interest upon any assets of the Recycling Contractor under any contract or instrument to which the Recycling Contractor is a party or by which the Recycling Contractor or its assets may be bound or affected.
- (iv) The Recycling Contractor has obtained all applicable environmental and other governmental permits, licenses and authorizations that are required under Applicable Law to perform its obligations hereunder.
- (v) This Agreement has been duly entered into and constitutes a legal, valid and binding obligation of the Recycling Contractor.
- (vi) There are no pending or threatened actions or proceedings before or by any court or administrative agency which would materially adversely affect the financial condition of the Recycling Contractor, or the ability of the Recycling Contractor to perform its obligations under this Agreement.
- (vii) The Recycling Contractor has read, executed, and understands the Interest Affidavit, Non-Collusion Affidavit and Affidavit of Claimant. Violation of any of these affidavits can result in termination of this Agreement by BAMA without penalty to BAMA. Any violation of any term in any of these affidavits is a breach of this Agreement.
- (viii) The Recycling Contractor is additionally responsible for reading and understanding any new City rules and regulations as they are made available to the public and must advise its employees and/or subcontractors of changes to the rules and regulations. The Recycling Contractor has also become familiar with other rules, laws and regulations applicable to this Agreement and the services to be provided by the Recycling Contractor and has advised its employees and/or subcontractors accordingly. The Recycling Contractor is additionally responsible for staying abreast of developments in the rules, laws and regulations applicable to this Agreement and the services to be provided by the Recycling Contractor and will advise its employees and/or subcontractors accordingly. Violation by the Recycling Contractor or any of the Recycling Contractor's employees or subcontractors of any Applicable Law can result in termination of this Agreement at the sole option of BAMA without penalty to BAMA. Any violation of any of BAMA's rules and regulations or other Applicable Law is a breach of this Agreement. The representations and covenants made in this Section shall survive the termination or expiration of this Agreement.

3.3 COMPLIANCE WITH LAWS

3.3.1 Compliance with Laws and Regulations

The Recycling Contractor agrees to comply, and shall cause its employees, agents and subcontractors to comply, with all statutes, regulations, rules, ordinances, orders, and court or agency decisions applicable to its performance under the Agreement. Without limiting the foregoing, the Recycling Contractor's provision of the work shall comply with, as amended, Title VI and Title VII of the Civil Rights Act of 1967, the Equal Pay Act of 1963, and Rehabilitation Act of 1974, the Immigration Reform Control Act of 1986, all OSHA regulations, and Executive Orders of the President of the United States.

Additionally, the Recycling Contractor shall:

- (i) Not discriminate against any employee or applicant for employment with respect to the individual's hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, national origin, age, sex, sexual orientation, or physical disability not related to job requirements.
- (ii) Establish and adhere to employment policies and procedures designed to reasonably assure that all personnel of the Recovery Contractor assigned to provide services under this Agreement are legally authorized to work in the United States and the Recycling Contractor shall register and participate in the "Status Verification System" as required by the provisions of Title 25, Oklahoma Statutes §1313(b)(1), in effect on the date hereof and as it may be amended from time to time, to verify the work eligibility status of all new employees.
- (iii) Comply with Title III of the Americans With Disabilities Act, 42 U.S.C. Sections 12101-12213, as in effect on the date hereof and as it may be amended from time to time (the "ADA") and the provision of such auxiliary aid or alternate services as may be required by the ADA.
- (iv) Comply with Section 515 of Title 252 of the Oklahoma Administrative Code and the Broken Arrow Code of Ordinances, in each case as they may be amended from time to time.

3.3.2 Licenses and Permits

The Recycling Contractor agrees to procure, at its own expense, all necessary licenses and permits required by BAMA, county, state, tribal and federal government for the performance of the work. The Recycling Contractor shall obtain certificates of compliance, where required.

3.3.3 Safety Regulations

The Recycling Contractor shall take all necessary precautions toward all safety issues and shall actively promote working conditions and work practices which will ensure all workers a safe and healthful work environment. Performance of work shall strictly comply with the U.S. Occupational Safety and Health Act (OSHA) of 1970, the Superfund Amendments and Reauthorization Act of 1986 (SARA Title 3), and all regulations imposed by any federal, state or local City having jurisdiction thereof.

3.3.4 Hazardous and Special Waste

Upon the Recycling Contractor's taking possession of Program Recyclable Materials, the Recycling Contractor accepts the title, risk of loss and all other incidents, rights and obligations of ownership for any and all such materials. In the event the Recycling Contractor, its agents, employees or subcontractors generate, transport, store, treat or dispose of any hazardous or special waste materials, the following provisions apply and the Recycling Contractor agrees to:

- (i) Ensure that all shipments of hazardous and special waste materials are accompanied by proper shipping papers and documents, as are required for the lawful transport of such waste and that packages or containers comply with all Applicable Law;
- (ii) Establish and follow health and safety plans which shall protect the environment, the Recycling Contractor's employees and subcontractors from the hazards and risks from handling or working with hazardous and special waste materials;
- (iii) Instruct all truck drivers or other transporters as to the proper procedure to be used and the precautions to be followed in handling and transporting of the materials. The drivers and trucks supplied by the Recycling Contractor will be trained, authorized, equipped, permitted, and licensed to carry hazardous and special waste material, in accordance with prudent safety precautions and Applicable Law. Trucks and other equipment used by the Recycling Contractor for performance of the work shall be in first-class operating condition, shall be suitable for the particular work requested, and shall be routinely inspected by the Recycling Contractor and timely maintained.

4 EFFECTIVE DATE AND TERM OF AGREEMENT

4.1 Effective Date

Except as otherwise provided for herein, the obligations of the parties shall take effect on the Effective Date.

4.2 Term of Agreement

4.2.1 Initial Term

Unless sooner terminated in accordance with the provisions in this Agreement, the term of this Agreement shall commence on the Effective Date and shall continue in effect until June 30, 2019 at 11:59 PM, CENTRAL TIME. This provision in no way limits BAMA's rights to terminate this Agreement at any time during the term of this Agreement pursuant to the provisions of this Agreement.

4.2.2 Optional Renewal Terms

After the Initial Term, as defined in Section 4.2.1 of this Agreement, BAMA shall have the option to renew this Agreement for up to one (1) additional year. The Recycling Contractor may prohibit BAMA from exercising an optional renewal term by providing written notice to the Contract Administrator of the Recycling Contractor's election, to reject a renewal or additional renewal on or before two (2) months preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Agreement. If the Recycling Contractor does not provide such written notice to the Contract Administrator on or before two (2) months preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Agreement prohibiting BAMA from exercising the optional renewal term, BAMA may upon written notice to the Recycling Contractor, not later than thirty (30) calendar days preceding the scheduled date of expiration of the Initial Term or the then current optional renewal term of this Agreement, exercise such optional renewal term by such notice. This provision in no way limits BAMA's right to terminate this Agreement at any time during the Initial Term or any optional renewal term thereof pursuant to the provisions in this Agreement.

5 RESPONSIBILITIES FOR ACCEPTANCE, TRANSPORT, PROCESSING, AND MARKETING OF PROGRAM RECYCLABLE MATERIALS

5.1 Responsibility to Accept Program Recyclable Materials

5.1.1 Acceptance of Program Recyclable Materials Collected by BAMA

The Recycling Contractor shall accept Program Recyclable Materials delivered by BAMA of Broken Arrow vehicles to the Recycling Facility. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement shall be a breach of this Agreement and may result in termination of this Agreement with the Recycling Contractor.

5.1.2 Acceptance of Program Recyclable Materials from Other Sources

The Recycling Contractor may accept Recyclable Materials from other sources at the Recycling Facility provided the acceptance of such Recyclable Materials shall not preclude or interfere with the acceptance, transporting, processing, and marketing of Program Recyclable Materials collected by BAMA of Broken Arrow.

5.2 Responsibility to Process Program Recyclable Materials

The Recycling Contractor shall be solely responsible for processing all Program Recyclable Materials delivered to the Recycling Facility by BAMA of Broken Arrow vehicles. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement with the Recycling Contractor.

5.3 Responsibility to Market Program Recyclable Materials

The Recycling Contractor shall be solely responsible for marketing all Program Recyclable Materials delivered to the Recycling Facility in accordance with this Agreement. The Recycling Contractor shall use its best efforts to research and investigate new markets for Program Recyclable Materials. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement with the Recycling Contractor.

5.4 Other Program Recyclable Materials Responsibilities

The Recycling Contractor shall be solely responsible for all aspects of the management, operations, and maintenance of the Recycling Facility including, without limitation, the following:

- (i) The acceptance, transporting, processing, and marketing of Program Recyclable Materials delivered to the Recycling Facility by City of Broken Arrow vehicles;
- (ii) Transportation of Unaccepted Loads delivered to the Recycling Facility (or, when directed by BAMA) to the Designated Disposal Facility;
- (iii) Transportation and disposal of Rejects from the Recycling Facility (or, when directed by BAMA) to the Designated Disposal Facility;
- (iv) The maintenance of complete and accurate records and the provision of reports to BAMA in accordance with the requirements of this Agreement;
- (v) Preventive maintenance; maintenance and repair of systems and equipment; maintenance and repair of building and grounds at the Recycling Facility;
- (vi) Prevention and clean-up of litter at the Recycling Facility; and

- (vii) The recruitment, hiring, and training of all managerial, supervisory, and operating personnel at the Recycling Facility.

6 RECYCLING FACILITY AND MRF LOCATIONS

6.1 Recycling Facility Location

- (i) The Recycling Contractor shall maintain the Recycling Facility for delivery of Program Recyclable Materials by BAMA at 1150 N. PEORIA, TULSA, OK 74106 throughout the term of the Agreement. Failure of the Recycling Contractor to process and market all Program Recyclable Materials collected by City of Broken Arrow shall be a breach of this Agreement and may result in termination by City of this Agreement with the Recycling Contractor.

7 DISPOSAL OF PROGRAM RECYCLABLE MATERIALS PROHIBITED

The Recycling Contractor shall not dispose of any Program Recyclable Materials or market Program Recyclable Materials to markets that the Recycling Contractor knows, or reasonably should have anticipated, will dispose of the Program Recyclable Materials, except when approved in writing by the Contract Administrator. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by City of this Agreement with the Recycling Contractor.

8 INSPECTION OF LOADS AND UNACCEPTED LOADS

8.1 The Recycling Contractor's Right to Inspect Loads

The Recycling Contractor shall have the right to inspect each load of Program Recyclable Materials upon discharge at the Recycling Facility for compliance with this Agreement.

8.2 Unaccepted Loads

8.2.1 Reasons for Unaccepted Loads

Upon the arrival of a City vehicle at the Recycling Facility, the Recycling Contractor may designate a load as an Unaccepted Load for the following reasons:

- (i) Between the dates of January 1, 2019, and June 30, 2019, a load of Program Recyclable Materials contains more than twenty percent (20%) of non-Program Recyclable Materials by weight; volume; or
- (ii) For any contract term after June 30, 2019, a load of Program Recyclable Materials contains more than fifteen percent (15%) of non-Program Recyclable Materials by weight; volume; or
- (iii) A load of Program Recyclable Materials presents a substantial endangerment to the public or employee health or safety.
- (iv) A load of Program Recyclable Materials contains more than ten percent (10%) of water, snow, sleet or ice

The Recycling Contractor may not designate a load as an Unaccepted Load for any reason other than those identified in this section.

8.2.2 Procedure for Unaccepted Loads

8.2.2.1 Notice of Unaccepted Load

If the Recycling Contractor designates a load of Program Recyclable Materials delivered by BAMA as an Unaccepted Load, the Recycling Contractor shall provide notification by telephone (cellphone or text) and written notice (which may be by email) to the Contract Administrator prior to BAMA's vehicle departing from the Recycling Facility. The Recycling Contractor shall state the reason the load was designated an Unaccepted Load in the notification. Additionally, the Recycling Contractor shall maintain the load separately from other material to afford the Contract Administrator the right to inspect it, as provided by Section 8.2.2.2 of this Agreement. If the Recycling Contractor fails to provide notice in accordance with this Section, the Recycling Contractor shall accept the load.

8.2.2.2 Right to Inspect Unaccepted Loads

Upon receipt of the notice by the Contract Administrator from the Recycling Contractor in accordance with Section 8.2.2.1, the Recycling Contractor shall retain the Unaccepted Load for an additional two (2) hours to allow the Contract Administrator (or their representative) the opportunity to inspect the load. The Contract Administrator may waive the right to inspect the load. Failure to inspect the load within two (2) hours of receipt of notice shall be deemed a waiver of the right to inspect the load.

8.2.2.3 Dispute or Acceptance of Designation as Unaccepted Load

If the Contract Administrator inspects the load, the Contract Administrator may dispute or accept the designation as an Unaccepted Load. If the Contract Administrator disputes the rejection of the load, the Recycling Contractor shall either 1) Sort the contents of the load into Program Recyclable Materials and non-Program Recyclable Materials and then weigh both portions individually, or 2) Accept the load. If the Recycling Contractor sorts and weighs the contents of the load, the Recycling Contractor shall accept the load if the weight of such non-Program Recyclable Materials is equal to or less than twenty percent (20%) of the weight or volume of the entire load between the dates of January 1, 2019, and June 30, 2019, or fifteen percent (15%) during any contract period after June 30, 2019.

8.2.2.4 Costs for Unaccepted Loads

The Recycling Contractor shall transport and dispose of Unaccepted Loads delivered to the Recycling Facility to a Designated Disposal Facility. The Recycling Contractor shall invoice BAMA actual transportation and disposal costs (plus 15%), in accordance with this Agreement, and BAMA shall reimburse the Recycling Contractor for disposal costs of Unaccepted Loads. The Recycling Contractor shall not apply the terms of the Processing and Marketing Fee and Recyclables Revenue Share, as shown in Appendix A, to Unaccepted Loads.

9 HANDLING OF REJECTS AND HAZARDOUS WASTE

9.1 Procedure for Managing Rejects and Hazardous Waste

9.1.1 Managing Rejects

The Recycling Contractor shall dispose of Rejects delivered to the Recycling Facility by BAMA. The Recycling Contractor shall be responsible for managing and transporting such Rejects to the Resource Recovery Facility or other Designated Disposal Facility.

9.1.2 Removal of Hazardous Materials

- (i) The Recycling Contractor shall notify BAMA (by telephone) of any delivery of Hazardous Waste to the Recycling Facility by BAMA. Upon receipt of such telephonic notice, BAMA shall determine a

method for disposing of such waste at BAMA's cost and shall notify the Recycling Contractor regarding the disposal of such waste, all in accordance with Applicable Law. In the event that BAMA does not dispose of such Hazardous Waste within a reasonable time after receipt of such telephonic notice, the Recycling Contractor shall notify the Contract Administrator that the Recycling Contractor intends to dispose of such waste, the amount that the Recycling Contractor will invoice BAMA for such service (which amount shall be consistent with then current market rates (plus 15%) and the date and time the Recycling Contractor intends to dispose of such waste. Unless BAMA removes such waste prior to the Recycling Contractor's stated date and time of disposal of such waste, the Recycling Contractor may dispose of such waste on or after such date and time and invoice BAMA for an amount not to exceed the amount stated by the Recycling Contractor during the telephonic notice to BAMA's Contract Administrator.

- (ii) City shall have the right, but not the obligation, to station a monitor at the Recycling Facility to monitor the Recycling Contractor's acceptance, handling and processing of materials at the Recycling Facility; provided that such monitoring shall be conducted in a manner so as to minimize interference with Recycling Facility operations.
- (iii) The Recycling Contractor shall provide to BAMA copies of all Hazardous Waste approval requests and reports which the Recycling Contractor sends to the Oklahoma Department of Environmental Quality, the U.S. Environmental Protection Agency, or any other governmental authority.

9.2 Costs for Transporting Rejects

The Recycling Contractor shall, at the Recycling Contractor's sole expense (plus, 15%), transport Rejects to a Designated Disposal Facility. BAMA and the Recycling Contractor agree that the costs associated with transfer and disposal of these materials is provided for in the terms of the Processing & Marketing Fee in Appendix A. The terms of this Section 9 shall survive the termination or expiration of this Agreement.

10 RECYCLING FACILITY AND MRF REQUIREMENTS

10.1 Recycling Facility Requirements

10.1.1 Recycling Facility

The following requirements shall apply to the Recycling Facility.

10.1.2 Collection Vehicle Information

BAMA shall provide the Recycling Contractor with the vehicle information and other reasonably required data regarding its collection vehicles at least ten (10) days prior to the Commencement Date.

10.1.3 Capacity

The Recycling Contractor shall construct, maintain, and operate the Recycling Facility to provide sufficient capacity for accepting and transporting Program Recyclable Materials delivered by BAMA of Broken Arrow vehicles for the term of this Agreement to the Recycling Facility. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by BAMA of this Agreement with the Recycling Contractor.

10.1.4 Scales

The Recycling Contractor shall operate and maintain adequately sized truck scales and computerized record-keeping systems for weighing and recording all incoming and outgoing delivery vehicles. The Recycling Contractor shall maintain a record containing the gross weight, tare weight, net weight, date,

time, and vehicle identification of each vehicle entering and exiting the Recycling Facility utilizing equipment provided by the Recycling Contractor. The Recycling Contractor shall weigh, record, and tabulate materials from BAMA of Broken Arrow vehicles and other haulers' vehicles separately. The Recycling Contractor shall test the Recycling Facility scales, as required by Applicable Law. At a minimum, the Recycling Contractor shall test the Recycling Facility scales every six (6) months. If testing of the Recycling Facility scales indicates that a scale tolerance is inaccurate by an amount greater than two percent (2.0%), then the Recycling Contractor and BAMA agree that the scale records for the preceding ninety (90) days shall be adjusted by the percentage the scale is inaccurate. If the Recycling Facility scales are unavailable during hours of operation, the Recycling Contractor shall use the average weight for the route and load of the day from the previous calendar month. BAMA shall conduct random and periodic weight checks on its trucks. The Recycling Contractor may accompany City on such checks. Failure of the Recycling Contractor to meet the requirements set forth in this section of the Agreement is a breach of this Agreement and may result in termination by BAMA of this Agreement with the Recycling Contractor.

10.1.5 Operation and Maintenance

Recycling Contractor shall:

- (i) Operate and maintain Recycling Facility in accordance with Applicable Law. The Recycling Contractor shall obtain and maintain all permits, licenses, and approvals for operating and maintaining Recycling Facility.
- (ii) Establish and maintain safety procedures for the Recycling Facility at a level consistent with Applicable Law and good industry practice.
- (iii) Maintain the Recycling Facility at all times in a neat, orderly, litter-free and odor free condition, including but not limited to, providing maintenance, implementing necessary repairs, purchasing and installing necessary replacement equipment or parts for the Recycling Facility, and maintaining a reserve of spare parts, all consistent with good working conditions.

10.1.6 Traffic Regulation

The Recycling Contractor may reasonably regulate the flow of traffic at the Recycling Facility and may deny access to any vehicle that repeatedly violates reasonable Recycling Facility safety and traffic rules promulgated by the Recycling Contractor.

10.1.7 Priority Access

The Recycling Contractor shall provide access during all hours of operation a minimum of one (1) City vehicle discharging Program Recyclable Materials at the Recycling Facility. Access shall mean that at any time during the Recycling Contractor's hours of operation in any day, a City vehicle at the Recycling Facility at any one time will be allowed to discharge materials at the Recycling Facility.

10.1.8 Truck Turn Around Time

The Recycling Contractor shall operate the Recycling Facility to minimize traffic impact (at the Recycling Facility) and to facilitate vehicle access during operations. The Recycling Contractor shall operate the Recycling Facility to maintain a daily average delivery vehicle turnaround time of twenty (20) minutes from when the vehicle arrives at the Recycling Facility scale to the time it passes out of the gates of the Recycling Facility. Upon twenty-four hours electronic notice from BAMA to the Recycling Contractor, the Recycling Contractor will provide the Contract Administrator with access to its records to verify vehicle turnaround time.

10.1.9 Receipt and Queuing

The Recycling Contractor shall construct, maintain, and operate the Recycling Facility to ensure the Recycling Facility is capable of accepting any and all Program Recyclable Materials delivered by BAMA of Broken Arrow vehicles from all types of delivery vehicles, including but not limited to packer trucks, roll-off trucks, and rear-discharging tilt-bed and side-discharging tilt-bed collection vehicles that normally deliver such materials. The Recycling Contractor shall construct, maintain, and operate the Recycling Facility to ensure the doors on delivery bays shall be of sufficient height to allow the exit of roll-off trucks and collection vehicles with bodies or containers in the dump (up) position.

10.1.10 Staging of Recyclable Materials

The Recycling Contractor shall stage Recyclable Materials to, prevent negative impact to maneuvering of vehicles in Recycling Facility, and promote the safety of persons at the Recycling Facility.

11 PROGRAM RECYCLABLE MATERIALS AUDITS

The Recycling Contractor and BAMA agree that composition information derived from Program Recyclable Materials Audits shall be used for determination of the following:

- (i) Evaluation by BAMA of participation in the pilot program;
- (ii) Program Recyclable Materials (including Rejects) revenues.

The Recycling Contractor shall conduct Program Recyclable Materials Audits of incoming loads of Program Recyclable Materials in accordance with the following:

- (i) The Recycling Contractor and City shall mutually agree on dates and times to conduct the Program Recyclable Materials Audits
- (ii) The Recycling Contractor shall conduct two (2) Program Recyclable Materials Audits during pilot period with one occurring near the beginning of the pilot and one near the end;
- (iii) Audits shall be conducted on two (2) loads, designated by BAMA, for each audit;
- (iv) Audits may be attended by the Contract Administrator.
- (v) For each Program Recyclable Materials Audit, the Recycling Contractor shall process the selected load and record after processing the weights of:
 - a. Each type of Program Recyclable Material; and
 - b. Rejects.

BAMA shall pay the Recycling Contractor \$3,200.00 for each audit conducted during the pilot period, with one occurring near the beginning of the pilot and one near the end.

12 PERSONNEL

12.1 Recycling Contractor's Representative and Key Personnel Contact Information

The Recycling Contractor shall have a qualified, competent, and reliable representative on duty to be in charge of its operations under this Agreement and who is authorized to make decisions and act on its behalf ("Recycling Contractor's Representative"). The Recycling Contractor agrees that BAMA and the Contract Administrator shall have twenty-four (24) hour access to the Recycling Contractor's Representative via a cellphone call or text message from BAMA. The Recycling Contractor agrees that the Recycling Contractor's Representative shall upon request of BAMA attend any or all City meetings. The

Recycling Contractor shall provide to the Contract Administrator in writing ten days before the Effective Date the Recycling Contractor's Representative's and any key personnel's direct contact information (i.e. name, business, cell, and home phone numbers, and email address). Answering machines, pagers or other devices that do not provide for immediate contact with the Recycling Contractor's Representative or key personnel shall not meet the requirements of this Section. If the Recycling Contractor's Representative or any key personnel change, the Recycling Contractor shall provide to the Contract Administrator the new direct contact at least five (5) Business Day(s) before the replacement takes over the duties of the former the Recycling Contractor's Representative or key personnel.

12.2 Personnel Requirements

The Recycling Contractor shall adhere to the following requirements:

- (i) The Recycling Contractor shall hire and maintain qualified personnel to provide service under this Agreement. The Recycling Contractor shall ensure that each employee or subcontractor operating commercial vehicles in BAMA or in connection with this Agreement, shall have a valid Oklahoma commercial driver's license.
- (ii) The Recycling Contractor shall furnish each employee and subcontractor involved in the performance of this Agreement with personal protective equipment and other appropriate safety equipment.
- (iii) The Recycling Contractor shall provide regularly scheduled, on-going operating and safety training for all employees and subcontractors. Such training shall be mandatory for all personnel and held not less than once per month. Training manuals and schedules shall be maintained at the local office of the Recycling Contractor and available for review at any time by the Contract Administrator.
- (iv) All employees and subcontractors involved in the performance of this Agreement including office personnel shall be provided adequate training before and during their employment or contract with the Recycling Contractor. This training shall familiarize employees and subcontractors with the required duties and standards of performance. All employees and subcontractors shall be provided comprehensive safety training, equipment, and supplies prior to and during the performance of their duties.
- (v) The Recycling Contractor's employees and subcontractors shall treat all customers, coworkers, City personnel, City employees and any person with whom they come in contact in the performance of their duties under this Agreement in a polite and courteous manner. Rudeness, belligerence, and the use of profanity are strictly prohibited. BAMA reserves the right to direct the Recycling Contractor to remove any employee or subcontractor who violates this policy from providing services related to this Agreement.
- (vi) In performance of services, the Recycling Contractor's employees and subcontractors shall adhere to Applicable Law.

BAMA shall notify the Recycling Contractor in writing of a complaint regarding any employee or subcontractor of the Recycling Contractor who violates any provision hereof. The Recycling Contractor will inform BAMA Administrator of the actions taken by the Recycling Contractor to prevent violations in the future. BAMA may require the Recycling Contractor to remove any unacceptable employee or subcontractor, as determined by BAMA, from service related to this Agreement.

13 HOURS OF OPERATION

13.1 Recycling Facility Hours of Operation

The Recycling Contractor shall operate the Recycling Facility from Monday through Friday, 7:00 AM, CENTRAL TIME to 5:00 PM, CENTRAL TIME. If a holiday, as defined in Section 14, occurs on a Monday through Friday, the Recycling Contractor shall operate the Recycling Facility on Saturday from 7:00 AM, CENTRAL TIME to 4:00 PM, CENTRAL TIME.

13.2 Recycling Facility Hours of Operation

The Recycling Contractor shall operate the Recycling Facility during hours of operation sufficient to support the requirements as set forth in this Agreement.

14 HOLIDAYS

For purposes of this Agreement, holidays shall solely include the following:

- (i) New Year's Day;
- (ii) Memorial Day;
- (iii) Independence Day;
- (iv) Labor Day;
- (v) Thanksgiving Day; and
- (vi) Christmas Day.

The Contract Administrator, at its sole discretion, may add or delete holidays. If the Contract Administrator elects to add or delete holidays, the Contract Administrator shall provide the Recycling Contractor notice in accordance with the provisions of this Agreement.

15 PROGRAM SUPPORT

The Recycling Contractor understands, acknowledges, and agrees that a smooth process during the pilot program is essential for the success of the pilot program and to the health and safety of BAMA and its residents. The Recycling Contractor understands, acknowledges, and agrees that the failure of the Recycling Contractor to timely and promptly provide the services pursuant to this Agreement may create serious health and safety issues for BAMA and its residents, and affect the success of the pilot program. The Recycling Contractor understands, acknowledges, and agrees that BAMA does not possess the necessary manpower or equipment to provide Program Recyclable Materials Processing and Marketing services.

The Recycling Contractor shall cooperate fully and timely with BAMA in the transition to collection of Program Recyclable Materials Processing and Marketing services. The Recycling Contractor shall cooperate fully with BAMA in:

- (i) The transition to the Recycling Contractor providing services upon the commencement of the Initial Term of this Agreement;
- (ii) The transition from the Recycling Contractor to subsequent person(s) or BAMA providing services upon expiration of the Initial Term or optional renewal term; and,
- (iii) The transition from the Recycling Contractor to subsequent person(s) or BAMA providing services upon termination of the Agreement.

If the Recycling Contractor fails to fully and completely provide Program Support in accordance with this Agreement, Contract Administrator may engage the immediate services of another provider to immediately fully and completely transition in accordance with this Agreement

16 RECORDKEEPING, REPORTING AND REPORTING FORMAT

16.1 Recordkeeping

The Recycling Contractor shall create, maintain, and make available records as defined in and/or required by Applicable Law, and any reports reasonably necessary to:

- (i) Document Program Recyclable Materials deliveries by BAMA of Broken Arrow vehicles by time delivered to facility, tonnage of material delivered, Unaccepted Loads by date collected, and other information as requested by the Contract Administrator. A monthly summary shall also be submitted to BAMA.
- (ii) Document Program Recyclable Materials Audit and other information as requested by the Contract Administrator. A monthly and annual summary shall also be submitted to BAMA.
- (iii) Document each delivery of Hazardous Waste to the Recycling Facility by time and date delivered to facility, description of the type of hazardous waste, tonnage of material delivered, procedure for handling material, and other information as requested by the Contract Administrator. A monthly summary shall also be submitted to BAMA.

All of the Recycling Contractor's records shall be available to Contract Administrator at reasonable times and places throughout the term of this Agreement and for a period of two (2) year after last or final payment.

The terms of this Section 18.1 shall survive the termination or expiration of this Agreement.

16.2 Reporting

16.2.1 Monthly Reports

The Recycling Contractor shall submit all monthly reports, including invoices for payment, to the Contract Administrator within seven (7) calendar days following the end of each calendar month. Monthly reports are those identified as such in Section 18.1 of this Agreement.

16.2.2 Report Format

Within sixty (60) calendar days of the Effective Date of this Agreement, the Recycling Contractor shall submit to the Contract Administrator for his/her approval the format and sample contents of the records to be maintained and the reports to be generated in fulfillment of the requirements of the Agreement. The Contract Administrator may request changes to this format. The Recycling Contractor shall submit all reports in electronic format approved by the Contract Administrator.

17 CONTRACT ADMINISTRATOR'S VISITATION RIGHTS, INSPECTION RIGHTS AND RIGHT TO AUDIT

17.1 Visitation Rights

BAMA shall have the right to have its representative present at the Recycling Facility during hours of operation to observe and monitor the Recycling Contractor's compliance with the provisions of this

Agreement, provided that such observation monitoring shall be conducted in a manner to minimize interference with Recycling Facility operations. In connection with any Recycling Facility visits, BAMA and its representatives and invitees shall comply with all reasonable rules and regulations adopted by the Recycling Contractor, including a requirement that each person visiting the Recycling Facility sign a statement agreeing (a) to assume the risk of the visitation but not the risk of injury due to the negligent acts of the Recycling Contractor, and (b) not to disclose or use, consistent with Applicable Law, any confidential information of the Recycling Contractor other than for the purpose for which it was furnished or as may be required by Applicable Law.

17.2 Inspection Rights

17.2.1 City's Right to Inspect Records, , Data and Documents

BAMA shall have access, upon twenty-four (24) hours' advance written notification to the Recycling Contractor, to all , records, data and documents of the Recycling Contractor, related to the performance of this agreement, for inspection, and audit, at BAMA's own expense.

17.3 Right to Audit

The Parties agree that the Recycling Contractor's, records, documents, accounting procedures, practices, for BAMA related to the services or terms of this Agreement are subject to inspection, examination, and copying by BAMA or its designees. The Recycling Contractor is required to retain all records related to this Agreement for the duration of the term of this Agreement and a period of two (2) years following expiration and/or termination of the Agreement. If an audit, litigation or other action involving such records begins before the end of the two (2) year period, the records shall be maintained for one (1) years after the date that all issues arising out of the audit, litigation or other action are resolved or until the end of the two (2) year retention period, whichever is later.

The terms of this Section 19.3 shall survive the termination or expiration of this Agreement.

18 PROCESSING/MARKETING FEES AND PROGRAM RECYCLABLE MATERIALS REVENUE SHARE, FEE ADJUSTMENTS SUBJECT TO BAMA'S APPROVAL, INVOICING, AND PAYMENT

18.1 Processing/Marketing Fees and Recyclable Revenue Share

18.1.1 Processing/Marketing Fees

During the Pilot Program, BAMA shall pay the Recycling Contractor \$78.60 for every ton of Program Recyclable Materials, including rejects mixed in with such materials delivered by BAMA to the Recycling Facility. This covers the Recycling Contractor's processing costs. In addition to the processing cost, a Sustainable/Environmental Adjustment (SEA) Fee is added. The SEA Fee can fluctuate up or down monthly based on uncontrollable National or Global economic conditions impacting the Recycling Contractors operating expenses.

During the term of the Pilot Program, the Recycling Contractor shall pay BAMA a Composite Value for Program Recyclable Materials, excluding rejects, collected by BAMA and delivered to the Recycling Facility. The Composite Value paid to BAMA will account for eighty percent (80%) of the revenue per Program Recyclables shown on the Pricing Model (Index Price Per Ton) column in Appendix A. The Composite Value will be calculated using the formulas described in Section 18.1.3.

The Composite value for each ton is multiplied by the total delivered tons of Program Recyclables each month and is subtracted from the Recycling Contractors Processing Fee, Transportation & Disposal Cost per ton for Rejects and SEA FEE to determine the net Customer Share value per ton owed to BAMA by the Recycling Contractor or amount owed by BAMA to the Recycling Contractor each month.

Appendix A shows how the formula is used in the Pricing Model table to establish the Net Customer Composite Share per Ton. The amount is subject to change monthly from the start of this Agreement through the initial term, ending June 30, 2019, plus options to renew

18.1.2 Processing/Marketing Fee Adjustment Formula

If at the end of the Initial Term this agreement is extended, in compliance with Section 4.2.2, the Processing/Marketing Fee may be adjusted, with approval by BAMA.

The Processing/Marketing fee will increase 3% annually.

18.1.3 Recyclable Revenue Share

To determine BAMA's Recyclable Revenue Share for every ton delivered to the Recycling Facility during the Pilot Program, an assumption was made about the composition of the incoming materials. The Material Composition Percentage used in the initial period can be seen in Appendix A. A value of one (1) ton of each type of Recovered Material was determined using the most recent pricing from the Recyclingmarkets.net and Pulp & Paper Weekly Index. The material composition percentage for each commodity was multiplied by its index pricing value. The value of all the commodities were then summed and the total value of one (1) ton of BAMA's delivered Program Recyclable Materials was derived.

18.1.4 Recyclable Revenue Share Adjustment Subject to City Approval

Recyclables composition in Appendix A shall remain fixed from the execution of this Agreement through the initial term, ending June 30, 2019.

If at the end of the Initial Term this agreement is extended, in compliance with Section 4.2.2, the recyclables revenue share prices and composition may be adjusted, with approval by BAMA. The index price per ton shall be adjusted monthly to the most recent pricing from the agreed-upon index source. The Material Composition should be adjusted to reflect actual results from the most recently-conducted audit.

18.2 Invoicing

The Recycling Contractor shall submit to the Contract Administrator a monthly invoice for Processing/Marketing Fees as established by this Agreement and other fees explicitly authorized by this Agreement, to which fees a credit for the Recyclable Revenue Share shall be applied, to BAMA on or before the fifth (5th) calendar day of each month for all Program Recyclable Materials Processing and Marketing services performed during the preceding calendar month in accordance with the fee structure established in Appendix A and as may subsequently be adjusted as set forth in this Agreement. The Recycling Contractor shall not invoice BAMA for any fees other than those specifically authorized in this Agreement.

18.3 Taxes

The Recycling Contractor represents that any labor rates provided hereunder are inclusive of legally required overtime, overhead, and all contributions and taxes payable under federal and state social security acts, old-age pension, workers compensation laws, unemployment compensation laws, income tax laws and any other applicable laws. The Recycling Contractor is responsible and shall pay any of the foregoing amounts on behalf of its employees. The Recycling Contractor further agrees that the amounts

invoiced for the work include any sales, use, gross receipts or like taxes on materials, supplies, equipment or services furnished by the Recycling Contractor. The Recycling Contractor shall itemize price(s), including associated sales, use, gross receipts or like taxes for each component of work. If the appropriate taxes are not separately listed, BAMA shall have the right to calculate such tax based upon the charges, and withhold the calculated amount from its payment. The Recycling Contractor shall bear all responsibility for taxes, levies, or other assessments on its income or revenues. The Recycling Contractor hereby agrees to indemnify and save BAMA harmless against the consequences of any failure by the Recycling Contractor or any of its subcontractors to pay or withhold taxes, charges or compensation due on behalf of its employees or agents involved in the work.

18.4 Payment

On or prior to the fifteenth (15th) calendar day of each month, BAMA shall pay the Recycling Contractor's invoiced amount less the applicable credit for any Recyclable Revenue Share, and reduced further by any disputed amounts, administrative charges, and authorized withholding of payments, as provided herein.

19 OWNERSHIP OF PROGRAM RECYCLABLE MATERIALS

Title to Program Recyclable Materials shall pass to the Recycling Contractor once the Recycling Contractor takes possession of the materials at the Recycling Facility. The Recycling Contractor shall at its own expense transport any Rejects to a Resource Recovery Facility or to the Designated Disposal Facility. After the risk of loss of Program Recyclable Materials delivered to the Recycling Contractor on behalf of City passes to the Recycling Contractor, if any such Program Recyclable Materials are lost, damaged, or scavenged, the Recycling Contractor shall be liable to BAMA for that sum of funds that would have been paid to BAMA in accordance with the provisions of this Agreement if such materials had not been lost, damaged, or scavenged.

20 ADDITION AND DELETION OF RECYCLABLE MATERIALS

BAMA reserves the right to add other Program Recyclable Materials to the program or delete Recyclable Materials from the program if the Parties agree it is economically and technically feasible. Additional fees, if any, for recovery of additional Recoverable Materials may be negotiated and implemented as a change in service fee by an amendment to this Agreement.

21 INDEMNIFICATION AND LIMITATION OF LIABILITY

21.1 No Indemnification by City

The Recycling Contractor understands and acknowledges that BAMA is a municipal corporation that is funded by its taxpayers to operate for the benefit of its citizens. Accordingly, and pursuant to Oklahoma law, BAMA shall not be required to indemnify or hold the Recycling Contractor harmless for loss, damage, expense or liability arising from or related to this Agreement, including any attorneys' fees and costs. In addition, the Recycling Contractor shall not limit its liability to BAMA for actual loss or direct damages for any claim based on a breach of this Agreement and the documents incorporated herein. BAMA reserves the right to pursue all legal and equitable remedies to which it may be entitled.

21.2 Indemnification by Recycling Contractor

The Recycling Contractor agrees to indemnify, defend, and save harmless BAMA and its officers, employees and agents for any loss, damage or demands, claims, causes of action and from all suits of whatever nature arising from or relating to it or its subcontractors' performance or nonperformance

under this Agreement. The Recycling Contractor must exercise all reasonable and customary precautions to prevent any harm or loss to all persons and property related to this Agreement.

21.3 Limitation of Liability

BAMA SHALL NOT BE LIABLE TO THE RECYCLING CONTRACTOR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE RECYCLING CONTRACTOR'S PERFORMANCE OF OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, EVEN IF BAMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

The terms of this Section 22 shall survive the termination or expiration of this Agreement.

22 INSURANCE REQUIREMENTS

22.1 No Insurance by BAMA

The Recycling Contractor shall be solely responsible for any insurance required under the terms of this Agreement and for any additional insurance it deems necessary. BAMA does not and will not carry insurance policies covering the Recycling Contractor.

22.2 Recycling Contractor Insurance Requirements

22.2.1 Specific Insurance Requirements

The Recycling Contractor and its subcontractors shall procure and maintain, during the term of this Agreement insurance coverage listed below. If Applicable Law requires a higher insurance limit, the Recycling Contractor shall procure and maintain the policy limit as specified by the Applicable Law.

- (i) Worker's Compensation Insurance - on behalf of itself, its partners, and all employees employed directly or indirectly by the Recycling Contractor who are to provide a service under this Agreement of limits no less than as required by Applicable Law.
- (ii) Employer's Liability \$500,000
- (iii) Bodily Injury (except Automobile) \$300,000 per person
- (iv) Automobile Bodily Injury Liability \$300,000 each person, \$1,000,000 each occurrence
- (v) Automobile Property Damage Liability \$300,000 each occurrence
- (vi) Excess Umbrella Liability \$1,000,000 each occurrence
- (vii) Commercial General Liability \$1,000,000 each occurrence and \$2,000,000 aggregate

The policies of insurance shall be primary and written on forms acceptable to BAMA and placed with insurance carriers approved and licensed by the State and meet a minimum financial rating by A.M. Best & Company of no less than "Excellent". The insurance policies provided herein shall be endorsed to provide that no policy shall be cancelled, changed or reduced in coverage, until after prior written notice has been delivered to City through certified mail as required in this Agreement.

The cancellation clause on the Recycling Contractor's insurance certificate must conform to the endorsement. Any conflict between the endorsement and the certification is a breach of this Agreement and can result in retraction by BAMA of the award of the bid to the Recycling Contractor or termination of this Agreement.

The policies of insurance must include an endorsement from the insurer adding BAMA as an additional insured to the policy.

The Recycling Contractor shall file proof of insurance certificate(s) for it and its subcontractors meeting the requirements as set forth herein with BAMA prior to execution of this Agreement. Additionally, the Recycling Contractor shall be solely responsible for assuring that all proofs of insurance filed with BAMA are up to date. Failure of the Recycling Contractor to fully comply with the requirements set forth herein regarding insurance is a breach of this Agreement and may be cause for termination by BAMA of this Agreement with the Recycling Contractor.

No changes are to be made to these specifications without prior written approval by BAMA.

Approval of the insurance by BAMA shall not relieve or limit the liability of the Recycling Contractor for any damages arising from the Recycling Contractor's performance of services provided herein.

Certificate of Liability Insurance is provided as Appendix C of this agreement. Certificate of Workers' Compensation Insurance is provided as Appendix D of this agreement.

22.2.2 General Requirements

The Recycling Contractor's and its subcontractors' insurers must be authorized to transact business in the State. All policies required herein, unless specific approval is given by BAMA, are to be written on an occurrence basis and the insurers shall agree to waive all right of subrogation against BAMA. Additionally, all policies other than Worker's Compensation policies shall name BAMA as additional insureds. The Recycling Contractor shall ensure that the insurance coverage required under this Agreement is obtained and maintained by the Recycling Contractor or its subcontractors for its subcontractors to cover their work hereunder. The Recycling Contractor shall be held responsible for any modification, deviation, or omissions in these insurance requirements as they apply to all subcontractors.

Each insurance policy required by this Agreement shall meet the following requirements:

- (i) Each policy shall apply separately to each insured against whom claim is made and suit is brought, except with respect to the limits of the insurer's liability.
- (ii) Each policy except Worker's Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured either party, reduced in coverage or in limits except after twenty (20) calendar days prior written notice by certified mail, return receipt requested, has been given to City. Worker's Compensation policy(ies) shall include an endorsement by the insurer that coverage shall not be suspended, voided or canceled by insurer or insured, reduced in coverage or in limits except after at least ten (10) calendar days prior written notice by certified mail, return receipt requested, has been given to City.
- (iii) City shall retain the right at any time to review coverage, form, and amount of insurance.
- (iv) The procuring of each required policy or policies of insurance shall not be construed to limit the Recycling Contractor's liability to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, the Recycling Contractor shall be obligated for the full and total amount of any damages, injury or loss caused by the action or inaction of the Recycling Contractor or its subcontractors in connection with this Agreement.
- (v) The Recycling Contractor shall be solely responsible for payment of all premiums for insurance contributing to the performance of this Agreement and shall be solely responsible for the

payment of all deductibles to which such policies are subject, whether or not BAMA is an insured under the policy.

- (vi) Claims made policies will be accepted for professional and hazardous materials liability coverage and such other risks as are authorized by BAMA. All such policies contributing to the satisfaction of the insurance requirements herein shall have an extended reporting period option or automatic coverage of not less than two years. If provided an option, the Recycling Contractor agrees to purchase the extended reporting period coverage on cancellation or termination unless a new policy is effected with a retroactive date, including at least the last policy year.
- (vii) Certificates of Insurance evidencing claims made or occurrence from coverage and conditions to this Agreement, as well as BAMA's Agreement or TAC number and description of work, are to be received and approved by BAMA staff as delegated by BAMA upon execution of this Agreement by the Recycling Contractor and within thirty (30) calendar days of expiration of the insurance when applicable. All insurance certificates shall be received and approved by BAMA before the Recycling Contractor will be allowed to commence or continue work.
- (viii) Notice of Accident (occurrence) and notice of claim shall be given to the insurance company, City, and the Contract Administrator as soon as practicable after notice to the insured of any incident (occurrence) or claim. The obligations of the Recycling Contractor pursuant to this Section 25 shall survive expiration or termination of this Agreement.

Failure to comply with any term of this Section 23 is a breach of this Agreement and may result in termination by City of this Agreement.

23 LIENS

No lien of any kind may exist against any property of BAMA. The Recycling Contractor shall assure that no liens are placed against property of BAMA due to the performance or nonperformance of the Recycling Contractor under this Agreement. All damages and costs incurred by BAMA as a result of the existence of any such lien(s) shall be paid to BAMA by the Recycling Contractor. Failure to comply with the terms of this Section 24 is a breach of this Agreement and may result in termination by BAMA of this Agreement.

24 WARRANTIES

24.1 Warranties

- (i) The Recycling Contractor expressly warrants that it has knowledge, familiarity, experience, equipment and fully trained personnel to perform its obligations under this Agreement, and that the work provided under this Agreement shall be provided expeditiously and in a good and workmanlike manner in accordance with the highest industry standards. Any work not so rendered shall be re-rendered promptly at no cost to BAMA.
- (ii) The Recycling Contractor expressly warrants the performance of its obligations under this Agreement that it or its subcontractors have furnished hereunder for three (3) calendar years from BAMA's acceptance of the work (the "Warranty Period"). Any non-conforming work shall be promptly redone at no additional cost to BAMA, or BAMA-at its option and election-shall receive a full refund for same.
- (iii) The Recycling Contractor expressly warrants that all work will comply with Applicable Law, including the Resource Conservation and Recovery Act, as amended, the Toxic Substances

Control Act, as amended, the Clean Air Act, as amended, and the Occupational Safety and Health Act, as amended, and any other applicable environmental regulations.

- (iv) The Recycling Contractor expressly warrants that the work provided under this Agreement will not constitute infringement or contributory infringement of any patent, trademark, copyright, trade secret or other intellectual property right.
- (v) The Recycling Contractor expressly warrants that: (i) it is knowledgeable about wastes identified to the Recycling Contractor by BAMA and is engaged in the business of providing the work and understands the currently known hazards related to the handling of waste material; (ii) it will dispose of such materials in full compliance with all governmental laws, regulations and orders; and (iii) it will immediately notify BAMA in the event that it encounters hazardous substances during the course of its work hereunder which were not known or disclosed at the time of commencement of this Agreement.

The Recycling Contractor's obligations under this Section 25 shall survive termination or expiration of this Agreement.

25 ADMINISTRATIVE CHARGES

The Recycling Contractor understands that if the Recycling Contractor does not timely perform its obligations pursuant to the terms of this Agreement or violates any provision of this Agreement, BAMA will suffer damages which are difficult to determine and adequately specify. Recycling Contractor agrees, in addition to any other remedies available to BAMA, that BAMA may withhold payment from the Recycling Contractor in the amounts specified below as administrative charges for failure of the Recycling Contractor to fulfill its obligations. The following acts or omissions shall be considered a breach of the Agreement and BAMA may require payment by the Recycling Contractor of the charges set forth for each act or omission:

- (i) Failure to deliver reports as required. *\$100 per day*
- (ii) Failure to maintain records in accordance with recordkeeping procedures. *\$100 per day*
- (iii) Failure to accept Recyclable Materials at Recycling Facility during Hours of Operation. *\$250 per occurrence*
- (iv) Failure to achieve truck turn-around time in accordance with Agreement. *\$25 per occurrence*
- (v) Failure to maintain scale house in accordance with Agreement. *\$250 per day*
- (vi) Failure to provide priority access to BAMA in accordance with Agreement. *\$100 per occurrence*
- (vii) Failure to have 24-hour access to the Recycling Contractor's Representative. *\$100 per occurrence*
- (viii) Disposal of Program Recyclable Material as Solid Waste. *\$1,000 per occurrence*
- (ix) Failure to adhere to litter and odor requirements as set forth in this Agreement. *\$250 each incident*
- (x) Failure to be able to accept materials on the Commencement Date of this Agreement or any day thereafter. *\$3,000 each day*

City may impose administrative charges if the Contract Administrator determines that performance consistent with the provisions of the Agreement has not occurred. The Contract Administrator shall notify the Recycling Contractor in writing or electronically of each act or omission under the terms of this Agreement reported to or discovered by BAMA or its designee. It shall be the duty of the Recycling Contractor to take whatever steps or action may be necessary to remedy the cause of the complaint.

BAMA may deduct the full amount of any administrative charges from any payment due to the Recycling Contractor. The remedy available to City under this paragraph shall be in addition to all other remedies which City may have under law, at equity, or pursuant to the terms of this Agreement.

For the purposes of this Agreement, the Recycling Contractor shall not be deemed to be liable for administrative charges where its inability to perform any service hereunder is the result of an event of Force Majeure as set forth in this Agreement, provided however, that the Recycling Contractor shall obtain approval for any such delay from the Contract Administrator prior to 3:00 PM, Central Time of any day any service to be provided hereunder is delayed.

The Recycling Contractor's obligations to make payments for administrative charges under this Section 26 occurring prior to the expiration or termination of this Agreement shall survive termination or expiration of this Agreement.

26 PAYMENT WITHHELD

In addition to express provisions elsewhere contained in this Agreement, BAMA may withhold from any payment otherwise due the Recycling Contractor such amount as determined necessary to protect BAMA's interests, or, if it so elects, may withhold or retain all or a portion of any monthly payment on account of:

- (i) Unsatisfactory progress of the work not caused by a Force Majeure event;
- (ii) Defective work not corrected;
- (iii) The Recycling Contractor's failure to carry out instructions or orders of BAMA or its representative;
- (iv) Execution of work not in accordance with the Agreement;
- (v) Failure of the Recycling Contractor to make payments to any subcontractor for material or labor;
- (vi) Damage to another contractor;
- (vii) Unsafe working conditions allowed to persist by the Recycling Contractor;
- (viii) Failure of the Recycling Contractor to provide reports required by law or this Agreement and other reports requested by BAMA or its designee;
- (ix) Use of any subcontractors without BAMA's prior written approval.
- (x) Failure of the Recycling Contractor to provide accurate invoices and supporting data as described elsewhere in this agreement.

When the above issues are resolved, payment shall be made for amounts withheld because of them and BAMA shall not be liable for interest on any delayed or late payment.

27 FORCE MAJEURE

Except for any payment obligation by either party, if BAMA or the Recycling Contractor is unable to perform, or is delayed in its performance of any of its obligations under this Agreement by reason of any event of Force Majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for BAMA or the Recycling Contractor to correct the adverse effect of such event of Force Majeure.

An event of "Force Majeure" shall mean the following events or circumstances to the extent that they delay BAMA, BAMA or the Recycling Contractor from performing any of its obligations (other than payment obligations) under this Agreement:

- (i) Acts of God, tornadoes, hurricanes, floods, sinkholes, fires, and explosions (except those caused by negligence of the Recycling Contractor, its agents, and assigns), landslides, earthquakes, epidemics, quarantine and pestilence; and
- (ii) Acts of public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrection, riots, civil disturbances, or national or international calamities.

In order to be entitled to the benefit of this Section 29, a party claiming an event of Force Majeure shall be required to give prompt written notice to the other party specifying in detail the event of Force Majeure and shall further be required to use its best efforts to cure the event of Force Majeure. The parties agree that, as to this Section 30, time is of the essence.

28 TERMINATION

Upon occurrence of any of the following events in regard to the Recycling Contractor, BAMA may terminate this Agreement without liability to the Recycling Contractor and pursue all of its legal, contractual, and equitable remedies for default by the Recycling Contractor.

- (i) The filing of a voluntary petition for bankruptcy relief by or on behalf of the Recycling Contractor, or the filing of an involuntary petition for bankruptcy relief against the Recycling Contractor, which is not dismissed or otherwise disposed of to BAMA's satisfaction within thirty (30) days thereafter.
- (ii) The appointment of a receiver of all or any substantial part of its property, and the failure of such receiver to be discharged within sixty (60) days thereafter.
- (iii) Filing of a petition or an answer seeking bankruptcy, receivership, reorganization, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.
- (iv) Committing an act of default of a provision of this Agreement.
- (v) Failing to timely and fully pay any or all impositions pursuant to this Agreement.
- (vi) As otherwise provided by this Agreement.

This Agreement shall terminate upon any one of the following:

- (i) The written agreement of the Parties.
- (ii) The expiration of the term(s) of this Agreement.

29 ACTS OF DEFAULT OR DEFAULT

Failure of the Recycling Contractor to fully, completely and timely comply with each obligation of the Recycling Contractor agreed to herein shall be an act of default. The Recycling Contractor understands, acknowledges, and agrees that anything other than full compliance with this Agreement shall be an act of default unless waived in writing by BAMA. The Recycling Contractor understands, acknowledges, and agrees that a breach of this Agreement which may not otherwise result in a default, shall constitute a default when the breaches, even if different breaches, are frequent or regular or repetitive. BAMA may terminate this Agreement and pursue all legal, contractual, and equitable remedies upon a default of this Agreement. Substantial compliance short of full compliance is an act of default unless waived in writing by BAMA.

30 DISPUTE RESOLUTION

In the event of a dispute between the Recycling Contractor and BAMA or its representative over the interpretation or application of the terms of this Agreement, the matter shall be referred to the Contract Administrator. If the Contract Administrator is unable to resolve the dispute, the matter shall be referred to a person designated by BAMA. If the person designated by BAMA is unable to resolve the dispute, the matter shall be scheduled for non-binding arbitration. Each party shall be responsible for its own expenses with respect to the arbitration. Additionally, the parties shall each pay one-half of the costs of the arbitration process (arbitrator fee, etc.). Regardless of these procedures, neither Party shall be precluded from exercising any rights, privileges or opportunities permitted by law to resolve any dispute.

31 NOTICE

Except as otherwise provided in this Agreement, all notices, demands and other communications (other than reports required to be furnished by the Recycling Contractor to BAMA as provided in this Agreement and routine communications) required by or related to this Agreement shall be in writing and directed as follows:

To Recycling Contractor:

Mr. Kenneth Burkett,
President
Tulsa Recycle & Transfer, Inc.
1420 W. 35th Street
Tulsa, OK 74107

To City:

Russell Gale, Assistant City
Manager
220 S. First Street
Broken Arrow, OK 74012

And a copy to:

Lee Zirk, General Services
Director
BAMA
485 N. Poplar Avenue
Broken Arrow, OK 74136

Any such notice, demand or other communication shall contain an express reference to this Agreement. Any Party may change its address for the purposes of this Agreement upon written notice to the other party. The following methods of delivery are acceptable: hand-delivery; overnight commercial air courier; or certified first-class U.S. mail, return receipt requested. Any such notice, communication or delivery shall be deemed delivered and effective upon actual receipt by the party to whom addressed.

32 MISCELLANEOUS

32.1 No Confidentiality

The Recycling Contractor understands and acknowledges that BAMA is subject to the Oklahoma Open Records Act (51 Oklahoma Statutes §24.1 *et seq.*) and therefore cannot assure the confidentiality of contract terms or other information provided by the Recycling Contractor pursuant to this Agreement be inconsistent with BAMA's compliance with its statutory requirements thereunder.

32.2 Relationship of Parties

The Recycling Contractor is, and shall remain at all times, an independent contractor with respect to activities and conduct while engaged in the performance of services for BAMA under this Agreement. No employees, subcontractors or agents of Recycling Contractor shall be deemed to be employees of BAMA for any purpose whatsoever, and none shall be eligible to participate in any benefit program provided by BAMA for its employees. Recycling Contractor shall be solely responsible for the payment of all wages and salaries, taxes, withholding payments, fringe benefits, insurance premiums, continuing education courses, materials or related expenses on behalf of its employees, subcontractors, and agents. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship among the parties. No Party shall have any right, power or authority to act as a legal representative of another Party, and no Party shall have any power to obligate or bind another Party, or to make any representations, express or implied, on behalf of or in the name of the other in any manner or for any purpose whatsoever.

32.3 Third Parties

This Agreement is between BAMA and the Recycling Contractor and creates no right of or duties to any other person, except that BAMA of Broken Arrow shall be a third-party beneficiary of this Agreement. No other person or entity is or shall be deemed a third-party beneficiary of this Agreement.

32.4 Assignment and/or Subcontracting

The Recycling Contractor may not assign this Agreement or use subcontractors to perform the terms of this Agreement without the prior written consent of BAMA. No assignment or subcontract shall relieve the Recycling Contractor of its liability under this Agreement. In the event the Recycling Contractor elects to use any subcontractors and BAMA provides prior written permission to the Recycling Contractor to use subcontractors, the Recycling Contractor shall have primary responsibility for full and complete satisfactory and acceptable performance under this Agreement. The Agreement, however, may be assigned for the purpose of financing after notification to, and approval of the terms of such assignment by BAMA.

32.5 No Franchise Intended

This Agreement shall not constitute a franchise or exclusive right to process or market Program Recyclable Materials on behalf of BAMA. The Recycling Contractor shall not make any representations in any manner to the contrary.

32.6 Binding Effect

This Agreement shall be binding upon BAMA and the Recycling Contractor and their respective successors, heirs, legal representatives and permitted assigns.

32.7 No Penalties

No provision of this Agreement is to be interpreted as a penalty upon any Party to this Agreement. The parties hereby agree that the rights of BAMA in the event the Recycling Contractor takes or fails to take

certain actions pursuant to this Agreement are reasonable, and that the parties desire such certainty with regard to such matters.

32.8 Further Assurance

The Recycling Contractor and BAMA agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all such further documents and perform such acts as shall reasonably be requested of it in order to carry out this Agreement and give effect to it. Accordingly, without in any manner limiting the specific rights and obligations set forth in this Agreement, the parties declare their intention to cooperate with each other in effecting the terms of this Agreement.

32.9 Time of the Essence

For purposes of this Agreement, the parties agree that time shall be of the essence and the representations and warranties made are all material and of the essence of this Agreement.

32.10 Headings

The headings used herein are for convenience only and shall not be used in interpreting this Agreement.

32.11 No Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

32.12 Entire Agreement

This Agreement and any documents incorporated herein constitute the entire agreement of the parties and supersede any and all prior agreements, oral or otherwise. This Agreement may only be modified or amended in a writing signed by both parties. Notwithstanding anything to the contrary stated herein or in the attachments to this Agreement, no future agreements, revisions or modifications that may be required under this Agreement are effective or enforceable unless such terms, revisions or modifications have been reduced to writing and signed by BAMA and the Recycling Contractor. The Recycling Contractor shall not be entitled to any claim for extras of any kind or nature.

32.13 Severability Provision

If any term or provision herein is determined to be illegal or unenforceable, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that if any provision is held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible to be legal, valid and enforceable.

32.14 Knowledge

The Recycling Contractor agrees that it has investigated and examined all conditions and requirements of this Agreement that may affect its full and complete performance of this Agreement and enters into this Agreement having completed such investigations and examinations to its full satisfaction and solely relying on such investigations and examinations.

32.15 Multiple Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

32.16 Appendices

All Appendices attached hereto contain additional terms of this Agreement and are incorporated into this Agreement by this reference.

32.17 Governing Law and Venue

This Agreement is executed in and shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to its choice of law principles, which shall be the forum for any lawsuits arising under this Agreement or incident thereto. The parties stipulate that venue is proper in a court of competent jurisdiction in Tulsa County, Oklahoma and each Party waives any objection to such venue. City does not and will not agree to binding arbitration of any disputes.

32.18 Attorney Fees

In the event of arbitration or litigation between the parties regarding this Agreement, each Party shall be responsible for its own attorney's fees and costs.

32.19 Authorization

Each Party hereby warrants and represents that the person signing on its behalf has full power and authority to enter into and perform this Agreement and bind the Party to this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges and agrees that it has read this Agreement, understands it, and agrees to be bound by it.

32.20 Publicity

No party (nor any agent or affiliate of a party) shall make any public statements, including, without limitation, any press releases, with respect to this Agreement and the transactions contemplated hereby, except as may be required by law or with written permission of BAMA.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

33 SIGNATURE PAGE

THIS PAGE INTENTIONALLY LEFT BLANK
SEE NEXT PAGE FOR SIGNATURES

ENTIRETY OF THE AGREEMENT & VENUE:

This agreement sets forth the entire understanding of the parties and supersedes any oral agreements. The terms of this agreement shall be interpreted and construed under the laws of the State of Oklahoma.

This agreement may be executed in several counterparts, each of which shall be deemed the original, but all of which shall constitute one and the same instrument.

Broken Arrow Municipal Authority

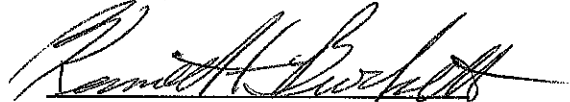
Chairman

Secretary


Date: _____

(Seal)

Tulsa Recycle & Transfer, Inc.



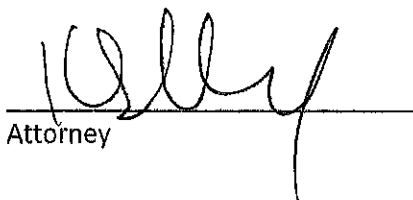
President



Secretary

Date: 11/29/18

Approved as to form:



Attorney

Attorney

APPENDIX A: PROCESSING & MARKETING FEE and RECYCLABLE REVENUE SHARE

This table shows how index pricing, the Processing Fee, and BAMA's Revenue Share are used to calculate a net revenue share (or cost) per ton for recyclables processing. The values used in this table reflect the index prices as of June 20, 2018; New index prices will be applied on or about January 24, 2019. The values of the Material Composition are based on sample composition for the Tulsa metropolitan area; following the initial audit (and any subsequent audits), these values will be adjusted accordingly.

Line #	Commodity Name	Price per Ton (per index)	Material Composition (based on most recent audit; sums to 100%)	Commodity Value per Ton (Index Price x Material Composition)
1	Cardboard	\$ 80.00	11.56%	\$ 9.25
2	Mixed paper	\$ 5.00	49.22%	\$ 2.46
3	Al cans	\$ 500.00	0.56%	\$ 2.80
4	Steel Cans	\$ 2.00	2.85%	\$ 0.06
5	#1 PETE	\$ 330.00	2.50%	\$ 8.25
6	#2 HDPE Nat	\$ 780.00	1.25%	\$ 9.75
7	#2 HDPE Color	\$ 280.00	1.05%	\$ 2.94
8	#5 PP	\$ 180.00	0.56%	\$ 1.01
9	3-mix glass	\$ (45.00)	15.45%	\$(6.95)
10	Trash (Rejects)	\$ (42.00)	15.00%	\$(6.30)
11			Composite Value per Ton (Sum of Lines 1 - 9)	\$29.56
12			City Revenue Share (80% of Line 11)	\$23.65
13			Disposal of Rejects (Line 10)	\$(6.30)
14			Total City Composite Share (Line 12 + Line 13)	\$17.35
15			Processing price per ton	\$(78.60)
16			SEA per ton	\$(0.75)
17			Net Customer Share (Cost) per ton (Line 14 + [Line 15 + Line 16])	\$(62.00)

APPENDIX B: DEFINED TERMS USED IN AGREEMENTS

Acceptable Solid Waste - Acceptable Solid Waste shall mean Solid Waste which is not Unacceptable Waste and which is collected from residences within BAMA of Broken Arrow pursuant to this Agreement. See also, **Program Recyclable Materials**.

Agreement(s) - Agreement or Agreements shall mean one or more of this Recyclables Processing Agreement or an extension thereof.

Applicable Law - Applicable Law shall mean any permits, licenses and approvals issued for or with respect to Recycling Contractor, equipment utilized by Recycling Contractor, properties (or any component thereof) utilized by the Recycling Contractor, or the performance by the Contractor of obligations hereunder, and any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which in any case, shall be enacted, adopted, promulgated, issued or enforced by a governmental body, regulatory agency, and/or court of competent jurisdiction that relates to or affects City, Recycling Contractor, any of their equipment or any of their properties (or any component thereof) or the performance by the Recycling Contractor of obligations hereunder.

BAMA, or Broken Arrow Municipal Authority – BAMA is composed of the five City Council member and its responsibilities of the Municipal Authority are to finance, develop, and operate the water, sewer, and solid waste activities of the City of Broken Arrow.

Bag - Bag shall mean a non-dissolvable plastic sack with a capacity of up to approximately thirty-five (35) gallons designed or intended to store Acceptable Solid Waste with sufficient wall strength to maintain physical integrity when lifted at the top.

Business Day - Business Day shall mean any day, Monday through Friday, from 8:00 AM, Central Time until 5:00 PM, Central Time, which is not a holiday designated as such in the Agreement.

City - City shall mean BAMA Broken Arrow, Oklahoma, and shall include City's officers, elected officials, employees, agents, volunteers and representatives,

Collect or Collection - Collect or Collection shall mean the act of removing Recyclable Materials for transport to the Recycling Facility.

Commencement Date - Commencement Date shall mean, for the Agreement for Processing and Marketing of Program Recyclable Materials, no later than January 1, 2019, and the date on which the Contractor shall begin performing processing and marketing of Program Recyclable Materials hereunder.

Comply or Compliance - Comply or Compliance shall mean fully and completely performing or meeting each and every term, requirement, obligation, performance criteria, duty or condition as stated in this Agreement in a timely manner.

Construction and Demolition Waste - Construction and Demolition Waste shall mean wastes from construction and demolition operations and shall include, but shall not be limited to concrete, bricks, plumbing fixtures, plastics, and lumber.

Construction/Renovation and Equipment Plan - Construction/Renovation and Equipment Plan shall have the meaning set forth in Sections 18 of the Agreement.

Contamination - Contamination shall mean the existence of any material or substance on or contained in Recyclable Materials other than the approved Program Recyclable Materials.

Contract Administrator - Contract Administrator shall mean BAMA of Broken Arrow's solid Waste Director, or his or her designee or designees, or such other Person(s) designated by BAMA, which shall represent City in the administration and supervision of the Agreement.

Contractor's Representative - Contractor's Representative shall mean the employee designated by the Contractor who is in charge of Contractor's operations under the Agreement and who is authorized to make decisions and act on Contractor's behalf as set forth in the Agreement.

Designated Disposal Facility - Designated Disposal Facility shall mean a disposal facility for (i) Acceptable Solid Waste, Green Waste or Rejects, or (ii) Program Recyclable Materials, as designated by City for limited purposes under the Agreement.

Designated MRF - Designated MRF shall mean a Material Recovery Facility designated by City.

Disposal - Disposal shall mean the deposit of any Solid Waste at a disposal site authorized by the State to manage such waste and shall meet all local, State, and federal requirements.

Effective Date - Effective Date shall mean the date set forth in the first sentence of the Agreement.

Garbage - Garbage means household discarded items arising from regular daily activities. It often refers to waste generated from the handling, preparation, cooking, serving, or consumption of food, including food containers, scraps, soiled paper, and household paper products. It also refers to all soiled disposal items generated in general household activities. These materials are not accepted as part of the curbside recycling program. As a waste stream, garbage means materials that were not source-separated for recycling.

Hazardous Waste - Hazardous Waste means waste designated as hazardous by the U.S. Environmental Protection Agency or by the appropriate state agency.

Industrial Waste - Industrial waste means any waste generated by an industrial or manufacturing process that is not a regulated hazardous waste.

MRF (Materials Recovery Facility) - A facility, also called a Recycling Facility herein, where source-separated Program Recyclable Materials are delivered for processing and marketing to end users for beneficial use or remanufacturing.

Pilot Program - Pilot Program refers to the four-month period, approximately January 15 to May 15, 2018, during which BAMA of Broken Arrow will conduct pilot testing of curbside collection of recyclables with a subset of its residential collection customers.

Processing/Marketing Fee - Processing/Marketing Fee shall mean the per ton fee paid by BAMA to the Recycling Contractor for accepting, processing, and marketing of Program Recyclable Materials.

Program Recyclable Materials - Program Recyclable Materials shall mean the agreed-upon materials accepted in the Broken Arrow curbside recycling program and required for acceptance for recycling by the Recycling Contractor. The exact Program Recyclable Materials shall be published and promulgated by BAMA of Broken Arrow in collaboration with the Recycling Contractor. Program Recyclable Materials shall be reasonably clean, dry, and empty. The initial Program Recyclable Materials for this Agreement are:

- Food and beverage cartons with or without caps (milk, juice, soup, broth, wine, ice cream)
- Glass food and beverage jars and bottles without caps, lids or plugs
- Aluminum and steel food and beverage cans, plus empty aerosol cans
- Mixed paper and cardboard (any clean paper that tears, including packaging, junk mail, magazines and newspapers, frozen food boxes, phone books, and paper bags)
- Plastic bottles, jugs, cups and tubs from beverages, food, soap, or detergent with or without caps

Certain other clean, dry, and empty materials shall not be counted as Rejects should they be delivered in nominal amounts are:

- Plastic buckets (#2HDPE or #5PP) up to 5 gallons (no metal handles)

Recyclable Revenue Share - Recyclable Revenue Share means the portion of the Composite Value per Ton, as calculated in Appendix A, multiplied by the number of tons delivered to the Recycling Contractor. The amount, less per-ton processing fees, is shared to BAMA on a monthly basis. If the value of the Recyclable Revenue Share is greater than the Processing/Marketing Fee, the share shall result in a rebate to BAMA. If the value of the Recyclable Revenue Share is less than the Processing/Marketing Fee but greater than zero, the revenue share will result in a "discount" or "credit" toward the Processing/Marketing Fee. If the value of the Recyclable Revenue Share is less than zero (negative), BAMA shall realize no rebate or discount, and simply pay the Processing/Marketing Fee.

Recycling Contractor – Recycling Contractor means Tulsa Refuse & Trash, the party contracting with the Broken Arrow Municipal Authority to provide the services contained herein.

Resource Recovery Facility - Resource Recovery Facility, or Recovery Facility, refers to the waste-to-energy plant in Tulsa, OK, operated under the auspices of the Tulsa Authority for the Recovery of Energy.

Refuse - Refuse is a general term to refer to garbage, solid waste, and other discarded items.

Rejects - Rejects means unacceptable, unprocessable, contaminated, or otherwise unrecoverable materials delivered to the Recycling Facility for processing but ultimately disposed of at a landfill or Resource Recovery Facility. Rejects also means non-Program Recyclable Materials which are sorted out from the delivered loads.

Resident - Resident shall mean a person residing within BAMA of Broken Arrow.

Shall - Shall will always mean mandatory and not merely discretionary.

Single Stream - Single Stream shall mean Program Recyclable Materials that are commingled and that do not require the Generator to subdivide the Program Recyclable Materials prior to Collection.

Solid Waste - Solid Waste shall mean all putrescible and nonputrescible refuse in solid, semisolid, or liquid form, including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, Construction and Demolition Waste, solid or semisolid commercial and industrial wastes including explosives, biomedical wastes, chemical wastes, herbicide and pesticide wastes. The term "solid waste" shall not include:

- (i) Scrap materials which are source separated for collection and processing as industrial raw materials, except when contained in the waste collected by or in behalf of a solid waste management system.

- (ii) Used motor oil, which shall not be considered to be a solid waste, but shall be considered a deleterious substance, if the used motor oil is recycled for energy reclamation and is ultimately destroyed when recycled.
- (iii) Special Waste.
- (iv) Hazardous Waste.

Special Waste - Special Waste shall mean those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. Special Waste includes but is not limited to sludge, septic tank pumping, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, non-hazardous industrial waste, tires, and asbestos wastes.

State - State shall mean the State of Oklahoma.

Ton - Ton shall mean a unit of weight equal to 2,000 pounds.

Unaccepted Load - Unaccepted Load shall mean a load of Rejects delivered by BAMA that is designated by the Recycling Contractor as an Unaccepted Load or Partial Load in accordance with the Agreement.

Unacceptable Waste - Unacceptable Waste shall mean Disaster Debris; Hazardous Waste; Construction and Demolition Waste; poisons; acids; caustics; explosives; body wastes; automobile frames; and materials which may cause damage to equipment or employees of Recycling Contractor; animal excrement; or any article or substance soiled by human or animal excreta; recyclables which have been combined or mixed with any of the above-mentioned items; and, any materials which cannot be processed at the Recycling Facility, which can cause the Recycling Facility operational problems, or which would have a reasonable possibility of causing injury to health, safety, or property.

Will - Will means mandatory and not merely discretionary.

APPENDIX C: CERTIFICATE OF LIABILITY INSURANCE



AMERENV-01

BCOOPER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/29/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER BancFirst Insurance Services, Inc. 5591 S. Lewis Ave. Tulsa, OK 74105	CONTACT NAME:	PHONE (A/C, No, Ext): (918) 747-4100	FAX (A/C, No): (918) 747-4176
	E-MAIL ADDRESS:		
INSURED Tulsa Recycle & Transfer, Inc. 1420 W. 35th St Tulsa, OK 74107	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Westchester Surplus Lines Ins		10172
	INSURER B: ACE American Insurance Co		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X	X	G27503949005	10/16/2018	10/16/2019	EACH OCCURRENCE \$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000	
							MED EXP (Any one person) \$ 5,000	
							PERSONAL & ADV INJURY \$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000	
	OTHER:						PRODUCTS - COMP/OP AGG \$ 2,000,000	
B	AUTOMOBILE LIABILITY	X	X	H0845792A005	10/16/2018	10/16/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY						<input checked="" type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY MCS90						<input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	BODILY INJURY (Per accident) \$
							Pollution CA9948	PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB	X	X	G27503950005	10/16/2018	10/16/2019	EACH OCCURRENCE \$ 5,000,000	
	<input checked="" type="checkbox"/> EXCESS LIAB						<input type="checkbox"/> CLAIMS-MADE	AGGREGATE \$ 5,000,000
	DED						RETENTION \$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY							
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$	
A	Onsite Cleanup			G27503949005	10/16/2018	10/16/2019	Onsite Cleanup \$ 1,000,000	
A	3rd party poll.			G27503949005	10/16/2018	10/16/2019	3rd party poll. \$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

30 DAYS NOTICE OF CANCELLATION

Broken Arrow Municipal Authority is named as additional insured as respect to the General Liability, Auto & Excess policies. Waiver of subrogation in favor of Broken Arrow Municipal Authority for General Liability, Auto & Excess policies.

Coverage is primary and non-contributory.

SEE ATTACHED ACORD 101

CERTIFICATE HOLDER

CANCELLATION

Broken Arrow Municipal Authority
485 N. Poplar Avenue
Tulsa, OK 74136

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY BancFirst Insurance Services, Inc.		NAMED INSURED Tulsa Recycle & Transfer, Inc. 1420 W. 35th St Tulsa, OK 74107	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

The insurance policies provided herein are endorsed to provide that no policy shall be cancelled, changed or reduced in coverage, until after prior written notice has been delivered to City through certified mail as required in this Agreement.

APPENDIX D: CERTIFICATE OF WORKERS' COMPENSATION INSURANCE



AMERWAS-01

BCOOPER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/29/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
BancFirst Insurance Services, Inc.
5591 S. Lewis Ave.
Tulsa, OK 74105

CONTACT
NAME:
PHONE
(A/C, No, Ext): (918) 747-4100 FAX
(A/C, No): (918) 747-4176
E-MAIL
ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: New York Marine and General Insurance Company

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Tulsa Recycle & Transfer, Inc.
1420 W. 35th St.
Tulsa, OK 74107

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/>						EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	WC2018EPP00264	4/1/2018	4/1/2019	E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

30 DAYS NOTICE OF CANCELLATION

Waiver of subrogation in favor of Broken Arrow Municipal Authority for Workers' Compensation policy.

The insurance policies provided herein are endorsed to provide that no policy shall be cancelled, changed or reduced in coverage, until after prior written notice has been delivered to City through certified mail as required in this Agreement.

CERTIFICATE HOLDER

CANCELLATION

Broken Arrow Municipal Authority
485 N. Poplar Avenue
Tulsa, OK 74136

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE